

ROYAL COMMISSION

REPORT OF THE COMMISSIONER

ON

**PURCHASE OF SURGICAL FIELD DRESSINGS AND
OTHER SURGICAL SUPPLIES**

COMMISSIONER:

The Honourable Sir CHARLES DAVIDSON, Knight



OTTAWA

PRINTED BY J. DE L. TACHÉ,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1917

UC
265
C2A08

26435

REPORT ON PURCHASE OF SURGICAL FIELD DRESSINGS AND OTHER SURGICAL SUPPLIES.

Mr. JOHN THOMPSON, K.C., in aid of the Commissioner.

Mr. W. F. TILLEY, K.C., and Mr. Hamnett P. Hill, Counsel for Mr. W. F. Garland and Mr. E. A. Powell. Pr. Ev. Vol. 1, p. 43.

PREFATORY.

There were assertions on the streets, in the press and elsewhere that sales of Surgical Field Dressings and other Surgical Supplies by Bauer & Black, Manufacturers of Chicago, Illinois, through the agency of one E. A. Powell, to the Department of Militia and Defence, had been infected with extravagant profits and secret profiteering.

In due course a return was made to Parliament of certain pertinent correspondence. So insistently was he said to be the real party in interest, that Mr. Garland, then member for the County of Carleton, Hansard (1915) Vol. 2, p. 545, took occasion to assert from his place in the House that neither in this, nor in any other Government contract had he been financially implicated. A request for rigid inquiry was added.

Witnesses were examined by the Public Accounts Committee. At a late stage of its proceedings, Powell forwarded to the Chairman a cheque for \$6,300. This, with \$2,601.77 which the Militia Contracts Branch had refused to certify for payment represented the profits made by Powell on the sales. To the end he persisted that his was the only beneficial interest.

For the reasons, in the manner, and with the results which will receive fuller development, this Commission later on, proceeded to a further investigation. It received material enlightenment from what had been already accomplished by the Committee.

There resulted discovery of the fact that Garland was Powell's concealed principal. Resignation of his seat followed.

During the proceedings, incidents of vital concern to the public welfare, and sometimes of almost dramatic kind, occurred.

The printed evidence taken before the Committee is Exhibit 2. It will be of greater convenience if references are made to the Journal of the House (1915 Vol. 51, part 2). I shall cite this book as "J."

I proceed to a relation of the facts which preceded, accompanied and followed the sales. And I shall take leave to state my conclusions thereon.

On August 4, 1914, war was declared.

A few days later, W. J. Shaver, Pr. Ev. Vol. 1, p.104, Canadian Sales Agent for Bauer & Black, arrived at Ottawa. In response to a telephone call Garland met him at the Chateau Laurier.

INTERVIEW BETWEEN LT.-COLONEL JONES, GARLAND AND SHAVER.

Together they, forthwith, sought an interview with Lt.-Col. Jones, then Director General of Medical Service, to whom Shaver was introduced by Garland. Conversation about surgical supplies took place. Colonel Jones spoke of his having seen the company's goods both at Washington and in England, and of their satisfactory character.

Pressing need of First Aid Dressings was mentioned, of British pattern, and not obtainable from England. An order was asked for. Pr. Ev. Vol. 1, p. 56.

Colonel Jones stated that he could requisition, but not order, and referred Shaver, in the latter respect, to H. W. Brown, Director of Contracts. A requisition for 30,000 "First Field Dressings" was delivered to Shaver to be handed to Brown.

A statement alleged to have been made by Col. Jones at this interview involves an aspersion on his official prudence and his official veracity.

The absence of Col. Jones on Overseas service; his notable conduct abroad; and, more pressingly still, the principle which he is said to have declared to be in existence as regards methods of the Department, make close scrutiny of this statement desirable.

THE ALLEGED NEED OF A LOCAL AGENT.

Before the Public Accounts Committee (J, p. 128), Shaver testified as to the alleged need of a local agent:—

"Q. And then what conversation did you have with Colonel Jones?"

"A. He said that the Government would not do business direct, although he regretted it.

"Q. That the Government would not do the business direct: that is direct with your company?"

"A. Sure.

"Q. Your company was prepared to do business directly with the Government?"

"A. If the Government saw fit to do business with us as we do in other countries."

Garland's account before me was (Pr. Ev. Vol. 1, p. 104, 109):—

"Q. Do you recollect Colonel Jones stating that the Canadian Government would not buy from Bauer & Black, that he would like it done that way but that the department had to buy through a local agent.

"A. No, Colonel Jones, to my knowledge did not say that."

"Q. What did he say?"

"A. Colonel Jones said he would have to buy from some Canadian establishment, as the Dominion Government could not deal with a neutral country in time of war, and he turned around in a jocular way and said to me: this is a reciprocity government.

"Q. Did you discuss with Colonel Jones what he meant by buying through a Canadian agency?"

"A. No, I did not, because I had always understood that in a direct way all these wholesalers sold through Canadian agencies, Johnson & Johnson sell through Gilmour Brothers, and Seaboury & Johnson sell through the National Drug."

The purpose of these assertions was to shift from Garland and Shaver, on the one hand, to Colonel Jones, on the other, initiation of the belief that appointment of a local agent was essential.

A scrutiny of the facts of record casts, at the least, grave doubts as to the accuracy of this testimony:—

1. It was wholly beyond the scope of the duty of Colonel Jones to make any such statement.

2. Colonel Jones handed the requisition to Shaver; here is effective proof that Shaver could be dealt with directly. Up to this point he was so in fact. Pr. Ev. Vol. 1, p. 58, 59.

3. In an interview had with Brown, a few hours later, a pretension of this kind was never mentioned.

4. It is not true that the Contract Branch of the Department refused to deal with other than a local agent.

5. Shaver was a resident of Toronto. J, p. 127.

DISCREPANCIES BETWEEN SHAVER AND GARLAND AS TO THE LATTERS PRESENCE AND PREVIOUS CONVERSATION.

Before the Public Accounts Committee Shaver never mentioned the presence of Garland at this interview. His suppression of this fact is remarkable. Indeed, he swore that he only called up Garland after having seen Jones. Before me at the beginning of his examination he declared, Pr. Ev. Vol. 1, p. 53:—

"I introduced myself to him and he said that he was very favourably impressed with Bauer & Black's goods, having seen them in Washington and in England, and they were perfectly satisfactory."

"Q. Was Mr. Garland there?

"A. At that time I think he was; I am not positive, but I think he was, although I am not sure." Pr. Ev. Vol. 1, p. 54.

There is contradiction on these points between Shaver and Garland. The latter testifies, Pr. Ev. Vol. 1, p. 104:—

"Q. What time did you meet him?

"A. Sometime in the morning, I would judge a little after nine o'clock, or between nine and ten o'clock.

"Q. Did you have any discussion with him at that time?

"A. Yes, we talked about some war supplies that were coming out, and he said his firm would like very much to get them.

"Q. In consequence of your discussion what did you and Shaver do?

"A. He got a cab and we went down to see Colonel Jones, on Emmett Street.

"Q. I will retrace my steps a little; how did you come to meet Shaver at the Chateau Laurier?

"A. He telephoned me he was in town and he wanted me to go down and see him.

"Q. And you say that he called a cab and you and he drove down to see Colonel Jones?

"A. Yes.

"Q. Were Colonel Jones, you and W. J. Shaver all present during the interview.

"A. Yes.

"Q. Are you quite sure that you were there during the whole interview?

"A. Yes."

It is beyond doubt that, as a result of a previous conversation, Garland accompanied Shaver to the office of Jones, and remained throughout the interview.

Shaver had been a regular visitor at Ottawa, and Garland, for fifteen years, a customer of the company. The one was, and the other was not a stranger to Colonel Jones. There is no doubt as to which of them did the introducing.

AGREEMENT BETWEEN GARLAND AND SHAVER AS TO APPOINTMENT OF POWELL.

At some time during the day, but certainly before an immediate subsequent interview with Brown, conversation took place between the two men as to the appointment of a local agent.

REPORT OF COMMISSIONER

Shaver, Pr. Ev. Vol. 1, p. 55:—

"Q. When was that question of the appointment of Powell discussed first?

"A. Well, I cannot say as to just when it was discussed, do you mean the hour?

"Q. No, was that appointment discussed over the telephone with Garland?

"A. Oh, no; it was not discussed over the telephone.

"Q. It was not discussed over the telephone?

"A. Oh, no.

"Q. So that Garland did not discuss over the telephone with you early in the morning the fact that he wanted his employee, Powell, appointed as agent?

"A. No, there was nothing over the telephone about that.

"Q. Then if that was not discussed over the telephone, it must have been discussed some time between the time you did telephone and the time you went to Brown's office?

"A. Oh, yes; there is no doubt about that.

"Q. How did the discussion arise as to the appointment of the agent?

"A. Well, nothing more than speaking of shipping the goods, and Mr. Garland said that the goods could not come to the Carleton Drug Company, they could not come to him, he did not want to have them come that way.—

—Pr. Ev. Vol. 1, p. 56.

"Q. And your understanding was that you would sell to him and he would sell to the government. Is that so?

"A. Yes.

"Q. That is what you inferred from his saying he intended to get that business if he could.

"A. Yes, to fill the requisitions, yes.

"Q. Now if Powell had not intervened as an agent you would have given the Government the benefit of that five per cent discount for cash?

"A. If they had done business directly, yes, certainly.

"Q. In other words you would have sent exactly identical invoices to the Government and intimated in them that they were subject to a five per cent discount?

"A. The very best. That is what they would have got."—Pr. Ev. Vol. 1, p. 68.

"Q. Did not Mr. Garland suggest E. Powell's name as agent because the Carleton Drug Company could not handle the contract; is not that a fair statement?

"A. Well yes, there is a certain amount of truth in that, naturally.

"Q. Had you any other reason for appointing E. Powell as agent?

"A. Oh no, I had no reason; I did not pick out the man, I simply wanted to get the requisition as long as this was acceptable to the Government.

"Q. What I want to get at, Mr. Shaver, is why you picked out E. Powell as agent?

"A. I did not particularly pick on him, it was not a case of picking him, he seemed to be acceptable to all parties.

"Q. Who suggested his name?

"A. Mr. Garland suggested his name.

"Q. Mr. Garland suggested his name?

"A. Surely, yes, yes."—Pr. Ev. Vol. 1, p. 57.

So that in sequence of events we have an early morning interview between Garland and Shaver; their interview with Jones; and then mutual agreement to appoint Powell. Next came an interview with H. W. Brown, Director of Contracts.

INTERVIEW WITH BROWN.

Garland was President of the Carleton Drug Company, and Powell was his employee.

With this arrangement, as to a local agent, antecedently perfected between them, the two men proceeded to interview Brown, to whom Garland introduced Shaver.—Pr. Ev. Vol. 1, p. 31.

Interveningly Colonel Jones had telephoned Brown that Shaver was on his way over.—Pr. Ev. Vol. 1, p. 31.

"Mr. Shaver," Brown testifies, "represented Mr. Powell to be his Ottawa representative, that is the representative in Ottawa of his firm."

At what particular moment, or whether from the hand of Shaver or not, the requisition reached him, he is unable to state. It was, however, about the same time.

In the belief of Shaver, he himself, carried it.—Pr. J, p. 133.

This was the first transaction with Bauer & Black. Ever before British-made dressings had been in departmental use.

"It was a new feature," declares Brown, "it was a different pattern, it was a special order in many ways, and on that account I remember Mr. Shaver telling me that Mr. Powell was their firm's representative here in that connection."—Pr. Ev. Vol. 1, p. 31.

The difference in pattern, which was of material extent, lay between the American and the British field dressing. The Bauer & Black Company well knew the former, having supplied it to the American Government. As to the latter they were in ignorance. On being pressed by Brown to fix a price, on the sample exhibited, Shaver found himself unable to do so. He was told to telephone to Chicago. This he, forthwith, did. Nor would the head office commit itself to a definite contract in this respect.

Beyond naming a proximate price of 18 cents Shaver would not go.—Pr. Ev. Vol. 1, p. 31; J, p. 136.

The company on manufacturing found it possible to lower the price to 16 cents. With praiseworthy rectitude they did so.—Pr. Ev. Vol. 1, p.

Instilled with the urgency of the requirement and, ignorant for the time being, of any other source of supply, Brown consented to give an order for 30,000 dressings.

It was the desire of Shaver to obtain a personal securement of the order:—

"What I wanted to do was to get my order direct from the Government."
—Pr. Ev. Vol. 1, p. 55.

If Powell had not intervened the Government would have had the benefit of the manufacturers' prices less five per cent. But Garland was insistent on this point and also on the necessity of shipments not being made to the Carleton Drug Company.

So it was that Shaver named Powell—designated by Garland and not by Brown,—as the local person who should receive the consignments.—Pr. Ev. Vol. 1, p. 62.

"Q. Is it usual for your company, to appoint an agent simply by an understanding?

"A. We have no agent; it is the same as any man would buy goods, you see, and sell them to the Government, he is an agent."—Pr. Ev. Vol. 1, p. 59.

"Q. It was nothing to you who supplied the Government, or how they were charged or what price they were charged, as long as you fulfilled your obligation?

"A. We had a satisfactory price and he could charge what he liked."
J, p. 129.

Of the antecedent conversation between Shaver and Garland—J, p. 130—whereat they had arranged to so appoint Powell, no mention whatever was made to Brown.

He accepted the name, as being that of a local representative of the company, to whom, in his belief, an ordinary five per cent commission would be allowed by his principals.

This belief found expression in subsequent communications, verbal and written, with the Auditor General.

It was, moreover, asserted in the order to Powell for 30,000 dressings, bearing date August 12, 1914, which was then and there handed to Shaver.

In all invoices for goods, thereafter delivered, Powell maintained the pretence of being a representative of the company and not a jobber.

Their printed headings read in this way:—

" 981 WELLINGTON STREET,
" OTTAWA, Ont.

" In account with E. Powell,

" Agent for Bauer & Black, Chicago, Ill.

" Surgical dressings, cotton, sponges, etc.

" Terms cash."

These, naturally, confirmed Brown in the belief, for the time being, at least, that he was dealing with a representative. Discoveries, of early occurrence, gave cause for a contrary belief.

As regards mention having been made at the interview, in any form, of five per cent, Shaver and Garland give express denial.

INTERVIEW WITH POWELL.

Having secured the order, Shaver proceeded to the Carleton Drug Company's office, and in the presence of Garland had a conference with Powell.

In rapid fashion his consent to take up the account was secured. Concerning financial standing or remuneration arrangements did not need to be made. As to the clerk, it simply meant obeying the already received instructions of his master; and as to the latter, it meant a scheme whereby he, although the real principal and the real profit drawer in intention, could remain concealed.

Shaver, however,—Pr. Ev., Vol. 1, p. 58,—did take precautions, seeing that Powell was a straight buyer. He received a letter from Garland, signed by the agent of the Somerset Street branch of the Union Bank of Canada, which stated that Powell was trustworthy; that he had obtained Government orders, and that arrangements had been made whereby drafts would be protected.

Of this letter, Powell had no knowledge.—Pr. Ev. Vol. 1, p. 72.

These curious methods of doing business are not yet ended. The letter cannot be found; and the bank agent kept no copy of it.—Pr. Ev. Vol. 1, p. 57; Pr. Ev. Vol. 1, p. 59.

VISIT TO CHICAGO AND FURTHER ORDERS.

Fortified with the order—dated 12th August, 1914—and the bank's letter Shaver proceeded to Chicago. The transaction was accepted by the company

The order,—Exhibit 5, p. 1,—called for delivery "within two weeks from date of order without fail." This condition was fulfilled.—Pr. Ev. Vol. 1, p. 59.

Repeat orders for 30,000 and 7,200 First Aid Dressings followed.

On November 11, 1914, a final 5,000 were called for at the stated price of 15½ cents, "each package to contain two bandages." Exhibit 15.

DELIVERIES AND PRICES.

The dressings having reached the Department—Pr. Ev. Vol. 1, p. 41, 47, 103—Powell billed the Director of Contracts for 23 cents. There was objection. Donaldson, a member of the staff, went to Powell, on instructions, and asked for an explanation.

There resulted the following letter:—

OTTAWA, Sept. 1, 1914.

“Mr. H. W. Brown,
Director of Contracts.

Dear Sir,—Some time ago you were kind enough as to forward me requisition for first field dressings, one for 7,200, one for 30,000, and a later one for 30,000. In discussing this with you over the 'phone, there was no price fixed; only we said about eighteen cents. Instead I cannot make the price any lower than twenty-three cents. The wholesale people are holding me up as you know now with prices, as they say they are too rushed. I can have all shipped at twenty-three cents and all additional orders at same price if any needed. The bulk of the goods will be delivered in a few days and all in specified time. Hoping that this is satisfactory.

I remain, Yours very truly,

E. POWELL.”

Pr. Ev. Vol. 1, p. 14.

The assertion in this letter that “the wholesale people are holding me up as you know now with prices, as they say they are too rushed,” was a deliberate falsehood, nailed on production of the company's selling rates. Instead of “holding me up,” the company had found it possible to deliver at sixteen cents, instead of the estimated eighteen cents.

Concurrently with this letter Garland called upon Brown; a discussion as to the attempted charge of 23 cents took place.—Pr. Ev. Vol. 1, p. 108.

In forty-eight hours, Powell, disturbed possibly by Brown's objections and by Donaldson's visit, informed the Director of Contracts that he would reduce the price to twenty-one cents:—

“OTTAWA, Sept. 3, 1914.

“Mr. H. W. Brown,
Dept. of Militia and Defence.

“Dear Sir,—Enclosed please find a corrected invoice on field dressings. This is the very lowest that I can do on because as you are aware that it is a specially prepared package Bauer & Black had to make this as a special. The one used and made by them for United States Army could have been laid down here much cheaper and is put up in a tin box similar to a sardine can. This could not be used in this case whatever. The firm were very loath about making this order at present at all as they had so many other large orders to attend to, one of about one-half million from their Bristol agency in Liverpool. I have no doubt but Maw, London, England, could have and perhaps can now for all I know prepare this article at less cost but you can clearly see the firm's position—special packages and only two weeks to deliver, rushed with other goods, etc. I hope that you will consider this in your fair way as I have tried to do.

“Thanking you,

“I remain,

“Yours very truly,

“E. POWELL.”

—Pr. Ev. Vol. 1, p. 14.

REPORT OF COMMISSIONER

Payment at this rate was made about September 12, 1914.—Exhibit 4, p. 7. It represented a profit of five cents, as contrasted with five per cent, on each dressing.—Pr. Ev. Vol. 1, pp. 41, 44, 45, 103. Other invoices of Bauer & Black began to arrive; a draft or drafts to cover them confronted Powell; the Contracts Branch evinced reluctance to certify his accounts; Donaldson was again sent to Powell to make inquiries as to the prices.

On the first occasion—Pr. Ev. Vol. 1, p. 47—about September 1, only the price of the first aid dressings was discussed; the second occasion had to do with other bills, rendered in the interval. Donaldson compared the prices charged by Bauer & Black with those sought to be imposed on the Department by the Powell invoices.—Pr. Ev. Vol. 1, p. 41. He made pencil memoranda of the cost rates, on some of the latter (Exhibit 4, pp. 2, 9 and 11)—then in hand for payment.

These figures were, he says, reported to the Director of Contracts.—Pr. Ev. Vol. 1, p. 44.

On the other hand, Brown asserts:—"I am quite sure that Donaldson never told me he compared with Bauer & Black prices."—Pr. Ev. Vol. 1, p. 50.

Meanwhile, and up to the end of the second week in November, other orders for the company's goods went to Powell.

In respect of supplies of this class tenders began to be called for, and from Powell, among others.—Pr. Ev. Vol. 1, pp. 51, 52. What he supplied in this way does not appear to have been, as contrasted with his total account, of large proportions.

Bauer and Black sold at manufacturers' wholesale prices. Two examples of their business rectitude, in this respect, are of record.

I have already written of the fact that they found it possible to reduce the cost for dressings from their estimate of 18 cents to 16 cents.

In the matter of a requisition of date August 24, 1914—Pr. Ev. Vol. 1, pp. 66, 67—the estimate of Colonel Jones was \$20,380. The company supplied the goods at a lower figure.

The orders were all of the "rush" kind: "within two weeks from date of order without fail;" "immediately;" "at the earliest date possible;" others fixed very short dates "without fail."

Shaver asserts that "they (the goods) were sold close in the anticipation of getting other business—we cut them right down."—Pr. Ev. Vol. 1, pp. 66, 67.

As notified by their letter of October 28, 1914, to Powell—(Exhibit 1, p. 21),—a voluntary reduction, as regards current orders was made, in consequence of a drop in the price of raw cotton.

Shaver received a salary and no commission on Government orders.—Pr. Ev. Vol. 1, p. 61.

Had the department secured Bauer & Black rates there would not have been cause for complaint, having regard to the accentuated exigencies of the period.

Shaver would have strengthened the reputation of his company if he had withstood the machinations of Garland to have the transactions disguised under the name of his clerk.

PROFITS.

In sequence of the letter of the Bank Manager, a current account was opened by Powell. It designates him as "Agent of Bauer & Black." Herein he deposited all sums received from the Department of Militia—\$38,617.77—and thereout paid all claims having to do with the transactions.

Copy of this account is Exhibit 20.

The gross amount of his invoices to the Government, was (Pr. Ev. Vol. 1, p. 106; Exhibit 20).....	\$41,219 54
He paid to Bauer & Black (Exhibit 20).....	\$31,559 19
He remitted to the Chairman of the Public Accounts Committee, in the manner which will have fuller description (Pr. Ev. Vol. 1, p. 107).....	0,300 00
The Department retained and refused to pay (Pr. Ev. Vol. 1, p. 106).....	2,601 77
	40,460 96

Leaving a balance of..... \$ 758 58

This balance is in part accounted for by payments for purchases from firms other than Bauer & Black; \$50 to himself; \$364.54 for cartage; expenses for printing, etc.; a credit balance of \$14.88 is in the account.—Pr. Ev. Vol. 1, p. 101.

Powell conferred with Garland on the prices he should charge.—Pr. Ev. Vol. 1, p. 72. They represented an all round profit of between twenty-eight per cent and twenty-nine per cent.—Pr. Ev. Vol. 1, p. 99.

At the request of Garland and Powell, a druggist named J. L. Rochester was examined, in an effort to establish that there was a reasonable profit margin.

This witness had some years previously sold to Garland, his business with the lease of the premises currently occupied by the Carleton Drug Company. Of this company he was a director, thereto qualified by the gift of one share.

Mr. Thompson pressed upon Rochester the fact that Powell was a clerk; not in business of his own without overhead expenses, a mere go-between.—Pr. Ev. Vol. 1, pp. 26, 27, 28.

Grudging admission was made that an advance of 60 per cent on one item was "good profit;" 100 per cent on another was a "little high;" and 77 per cent on another was "high;" and 85 per cent on another the like. Undisturbed by these striking features Rochester held on to the belief that 28 to 29 per cent was not unreasonable.

I dismiss his opinion as unworthy of consideration. The profit sought to be made, was extortionate.

The next official chapter of the incidents connected with these accounts was their payment by the Paymaster General, as thereto authorized by departmental certificates, and their transference, in due course, to the Auditor General, for his scrutiny.

His belief that the prices were excessive led the Auditor General to obtain the figures on which duties had been paid at Toronto, the port of entry.

Thereupon he wrote the following letter to the Deputy Minister of Militia and Defence, wherein he took exception to the prices paid:—

AUDITOR GENERAL'S OFFICE,

November 26, 1914.

SIR,—I have received from your Department accounts amounting to \$11,863.50 paid on 10th September, 1914, and \$6,300 paid on 16th September, 1914, for medical supplies received from E. Powell. These accounts are certified 'prices are fair and reasonable.' I find that these goods could have been purchased for 40 to 60 per cent less from the regular wholesale trade and think that an order amounting to over \$18,000 should not be paid for at retail prices.

I have to request that you will let me know on what grounds the certificate is made that the prices are fair and reasonable, and if any steps were taken to obtain more reasonable prices.

I am, sir, your obedient servant,

J. FRASER,
Auditor General.

The Deputy Minister of Militia and Defence, Ottawa."
—Pr. Ev. Vol. 1, p. 10. Exhibit 1, p. 24.

Collaterally, interviews were had with the Director of Contracts and the Paymaster General. In these the former held to his belief that Powell was not to receive more than five per cent commission on the dressings, and that he had been so informed by Garland. The latter had justification in the certificates for payment.

The Auditor General thereupon wrote to the Paymaster General:—

December 17, 1914.

"SIR,—I enclose herewith a list of the prices paid by E. Powell for medical supplies for your Department and also the prices which he has charged for these goods. From our conversation it would appear that he was to receive about five per cent profit on the transaction instead of about 40 per cent. Please obtain a refund of the difference.

I am, sir, your obedient servant,

J. FRASER,
Auditor General.

J. W. Borden, Esq.,
Accountant and Paymaster,
Department of Militia and Defence, Ottawa."
—Pr. Ev. Vol. 1, p. 10. Exhibit 1, p. 24.

The list so enclosed reads:—

	Price Paid by Powell at Ottawa:	Charged Department.
Lint compound, 1-oz. pkt.	05½	10
Wool cotton, absorb. compd., 1-oz. pkt.	5½	10
Wool cotton, absorb. compd., 2 oz. pkt.	10	15
Cotton in 1-lb. rolls, each.	32	50
Gauze, absorb. sub-compd., 36 x 2½, per doz.	1 00	1 80
Gauze, 36 x 36, per doz.	3 20	4 20
Gauze, plain, 2½ yd. pkts.	19	30
Gauze, plain compd. 2½ yd. pkts.	25	40
Gauze, sublimated, 2½ yd. pkts.	33½	50
Gauze, plain, 5-yd. rolls per doz.	4 20	6 00
Silk oil, 5-yd. roll.	4 80	5 30
Silk oil, 1-yd. roll.	1 04	1 20
Ligatures, catgut sterilized, 3 sizes in pkt.	18	22½
Ligatures, silk braided, sterilized, 3 sizes in pkt.	18	30
Silkwork gut (100 strings).	50	75
Rubber drainage tubes, assistant sizes.	3 20	3 20
Rubber drainage tubes, sterilized.	3 20	3 20
Bandages, 2½-inch x 6-inch compd., per gross	8 00	12 00
Bandages, 3-inch x 6-inch compd., per gross	8 40	12 00
Bandages, 3-inch, per doz.	4 40	8 00
Bandages, flannel gauze, compd., 3 sizes, per gross	8 00	12 00
Bandages, triangular, compd., per doz.	1 27	1 50
First field dressings.	15	21
Plaster of Paris, 3-inch indiv. pkg., per doz.	2 56	4 00
Plaster adhesive zinc, 1 x 10-yd. spools, each.	52	70
Plaster adhesive zinc, 2 x 10-yd. spools, each	72	1 00
Plaster moleskin, per yard.	42	70
Surgeons' needles, straight, per doz.	25	50

—Pr. Ev. Vol. 1, pp. 11, 24; Exhibit 1, p. 24.

Consequent upon this letter the Director of Contracts saw Garland rather than Powell, because of his belief that he had certified the field dressing account at 21 cents

on Garland's representation that the margin was only five per cent, which Bauer & Black had to pay.—Pr. Ev. Vol. 1, p. 38, 39.

That the interview took place is not denied; but Garland joins issue as to any assurance of extent of profit.

In any event Garland, at a shortly thereafter date, called on the Auditor General. He said the profits on the dressings were not 40 to 60 per cent; that they did not exceed five per cent. His further assertion was (Pr. Ev. Vol. 1, p. 10):—

" . . . he had nothing to do with it except in introducing Mr. Powell to the Department and that he had spoken to the Department requesting them to give Mr. Powell some business, and it would be a question for Mr. Powell to answer himself as to the profits."—Pr. Ev. Vol. 1, p. 12.

There ensued further correspondence:—
Pr. Ev. Vol. 1, p. 15. Exhibit 1, p. 22.

From the Director of Contracts to Powell:—

"DEPARTMENT OF MILITIA AND DEFENCE,

January 26, 1915.

"SIR,—On the 24th August last, an order was given you as Ottawa agent of Messrs. Bauer & Black, of Chicago, to furnish the Militia Department with 30,000 first field dressings of British War Office pattern, at the earliest date possible. It was understood verbally that deliveries would be made within two weeks.

"Prior to giving this order, Mr. W. F. Garland, M.P., and Mr. Shaver, the Toronto agent for Messrs. Bauer & Black, had called to see me. Mr. Shaver, after telephoning his Chicago head office, declined to quote a price as the time was so short and the style and pattern being British and not American; it was a case of goods made specially to order, and of working overtime to get the work done. Owing to their unfamiliarity with the pattern, Mr. Shaver said his principals could not undertake to set a price, but he thought the dressings could be supplied at about 18 cents.

"Although this was much higher than we had usually paid for British-made dressings, the order was given, because at that time there was no other source of supply.

"Mr. Shaver informed me, in the presence of Mr. Garland, M.P., that you were Messrs. Bauer & Black's Ottawa representative; and requested that the order be sent you. This was accordingly done.

"Later on, repeat orders for \$7,200 more of these field dressings were given you upon the same terms—early delivery in each case being imperative.

"During September you invoiced the Department for these goods at 23 cents each.

"This was greatly in excess of the prices formerly paid, as well as of the price estimated by Mr. Shaver—18 cents—that I refused to certify the accounts for payment, and sent Mr. Donaldson of this office to see you and obtain some explanation of the extraordinary advance over the estimate.

"Eventually, Mr. W. F. Garland, M.P., called to see me; said the price would be cut down at 21 cents, but that was the utmost reduction he—or you—could make; since, at that rate, *you got barely 5 per cent on your expenditure.*

"On the strength of this emphatic and repeated assurance of Mr. Garland that your profit was only 5 per cent, this reduction from 23 cents to 21 cents was accepted and the accounts paid. Only this statement of Mr. Garland secured the payment of your accounts—this and nothing else.

"On the 26th November, the Auditor General wrote the Deputy Minister of Militia and Defence, taking exception to the prices paid you for these and

REPORT OF COMMISSIONER

other goods; and later on, the Auditor General informed General Fiset and myself that Mr. Garland had admitted to him that your profit was not 5 per cent as he had formerly stated, but five cents per dressing—a profit of 31½.

"The Auditor General has, therefore, called upon this department to obtain a rebate from you of \$2,822.40, equivalent to 26½ per cent upon 67,000 field dressings at 16 cents each—this being the actual cost to you of the dressings; and 26½ per cent being the difference between 31½ per cent profit which you actually received; and 5 per cent which Mr. Garland represented your profit to be.

"I am directed, therefore, to request you to refund this amount to the department immediately; or make a deposit to the credit of the Receiver General.

"Meantime, until this has been done, payment of the following invoices will be withheld:—

Invoice	December	15,	1914.	.....	.....	\$	60	00
"	"	25,	"	.....	.....		775	00
"	"	24,	"	.....	.....		960	00
"	"	26,	"	.....	.....		45	87
"	"	12,	"	.....	.....		719	60
"	"	14,	"	.....	.....		41	50
								<hr/>	
								\$2,601	77

Awaiting your reply,

I am, sir, Your obedient servant,

H. W. BROWN,

Director of Contracts.

"E. POWELL, Esq.,
"981 Wellington Street,
"Ottawa."

From the Deputy Minister of Militia and Defence to the Auditor General:—

DEPARTMENT OF MILITIA AND DEFENCE,
OTTAWA, January 27, 1915.

SIR,—I beg to acknowledge receipt of your two letters of the 26th November and 17th December last, in which exception is taken to payments made to E. Powell for first field dressings and other medical supplies purchased for the First Contingent. Mr. Brown, Director of Contracts, by whom these orders were given, makes the following statement with regard to these accounts:

"The first requisition for field dressings was made by the Director General of Medical Services on the 22nd August, when 30,000 field dressings were demanded. This requisition was accompanied by the following note: 'Here-with service requisition for 30,000 first field dressings, to be supplied by Messrs. Bauer & Black, Chicago. Kindly rush this order.' I was told by telephone that these field dressings should be available at the latest within two weeks; and that Messrs. Bauer & Black's representative was in Ottawa at that time; that inquiry had been made, and it was found that no other source of supply was available. I was requested to make arrangements with Mr. Shaver, Bauer & Black's agent, with as little delay as possible, as the necessity for the dressings was most immediate and pressing.

"Prior to this, it had been the practice to procure these dressings from British manufacturers, S. Maw & Sons, who are contractors also for the British War Office.

"On or about August 24, Mr. W. F. Garland, M.P., and Mr. Shaver, of

Toronto, representing Messrs. Bauer & Black, called to see me and we discussed prices, deliveries, etc. I asked Mr. Shaver to quote a price, which he declined to do until he had telephoned Chicago. Later on, he answered me that his head office could not make any certain price, because the time given them was so short that they might have to work overtime; and the Militia medical staff insisted upon the War Office pattern of dressings, which was different from the American package. Mr. Shaver said, moreover, that Bauer & Black were contractors for the American Government for the supply of field dressings, and could give prompt and early deliveries of the United States Army dressings at a much lower price; but that this was not satisfactory to Colonel Jones and his staff. Pressed to give a price, Mr. Shaver said he thought it might be about 18 cents, but this he would not guarantee.

"Mr. Shaver, moreover, informed me in the presence of Mr. Garland, M.P., that Mr. E. Powell of Ottawa was the Ottawa representative of Bauer & Black; and that he wished the order to be given Mr. Powell in that capacity."

"We had never had any dealings with Bauer & Black before, so far as I know; as all supplies of this kind had hitherto come from British sources."

"In accordance with Mr. Shaver's instructions, the order was given to Mr. Powell, as representing Bauer & Black, Chicago."

"The dressings were delivered within a short time; and, subsequently, repeat orders were given under much the same conditions. In each case, immediate delivery was insisted upon, the time was very short and the British or other sources of supply were not available."

"During September, Mr. Powell sent in several bills for these dressings, at 23 cents. I refused to certify them for payment, as the price was exorbitant and not in accordance with the understanding with Mr. Shaver; who, although he had not promised anything definite, had held out some expectation of being able to supply at 18 cents. I afterwards sent Mr. Donaldson of my office to Powell to get some information but without much result."

"Subsequently, Mr. Powell reduced his price from 23 cents to 21 cents, but I refused to certify the accounts at this price. Finally, Mr. W. F. Garland, M.P., called and discussed the matter with me; and assured me with some emphasis, that Mr. Powell at 21 cents was making only 5 per cent on the cost of the dressings. Mr. Garland made the statement more than once and emphatically. Upon the strength of this assurance that this was so, I certified the accounts as fair and reasonable."

"It appears from the list enclosed with your letter of the 17th December, that Mr. Powell's profit on these field dressings was not 5 per cent but 5 cents each; or 31½ per cent—not 40 as stated in your letter."

"I beg to enclose copy of a letter sent by Mr. Brown to-day to Mr. Powell, calling for a rebate of \$2,822.40, representing the difference between the 5 per cent which Mr. Garland said Mr. Powell was getting and the 31½ per cent which Mr. Powell actually made."

"You will observe from Mr. Brown's letter to Mr. Powell that the Department still owes Mr. Powell six different bills for supplies, aggregating \$2,601.77; and that it is proposed to withhold payment of these bills until Mr. Powell has made a refund of the amount cleared."

"I am, sir, your obedient servant,

"EUG. Fiset,

"Surgeon General Deputy Minister of Minister of Militia and Defence."

REPORT OF COMMISSIONER.

"NOTE.—I also enclose copies of letters from Mr. Powell, dated September 1 and 3, and copy of one from Bauer & Black dated October 28.
"The Auditor General,
"Ottawa."

Pr. Ev. Vol. 1, p. 12; Exhibit 1, p. 12.
From W. F. Garland to the Director of Contracts:—
Exhibit 1, p. 19.

OTTAWA, Ont., January 28, 1915.

"Mr. H. W. BROWN,
"Director of Contracts,
"Militia Department,
"Ottawa."

"Dear Sir,—Mr. E. Powell has shown me your letter of the 26th January, making certain complaints as to the prices charged and paid for some field dressings—British War Office pattern, which Mr. Powell has supplied to the Militia Department as agent for Messrs. Bauer & Black, of Chicago.

"The letter contains considerable reference to myself, and you go so far as to intimate that I had an interest in the profits of this order, and further, that I had misrepresented to you what these profits were.

"I say to you now in the plainest language that can be used, that your insinuations are false and cowardly, and I say further that I made no representation of any sort as to these profits, and you know that I did not. I will await with interest your attempt now to establish that I had any interest whatever in Mr. Powell's order.

"I recommended Mr. Powell to your Department and on his behalf requested that he receive consideration in this matter, and, having some knowledge myself of this class of business, I urged the price paid by your Department—21 cents—as fair and reasonable under circumstances, and my position in all these matters I am prepared to defend at any time when called upon, and have nothing whatever to conceal.

"I at no time stated that the profit was only five per cent, or anything of that kind. So far as I know the Department purchased with full knowledge of what they were getting, and paid accordingly.

"It will be, of course, for Mr. Powell and not for me, to take up with the Department the question as to whether or not he should be paid for the balance of the goods he has supplied, which supplies I understand were made after open tender.

"Yours truly,

"W. F. Garland."

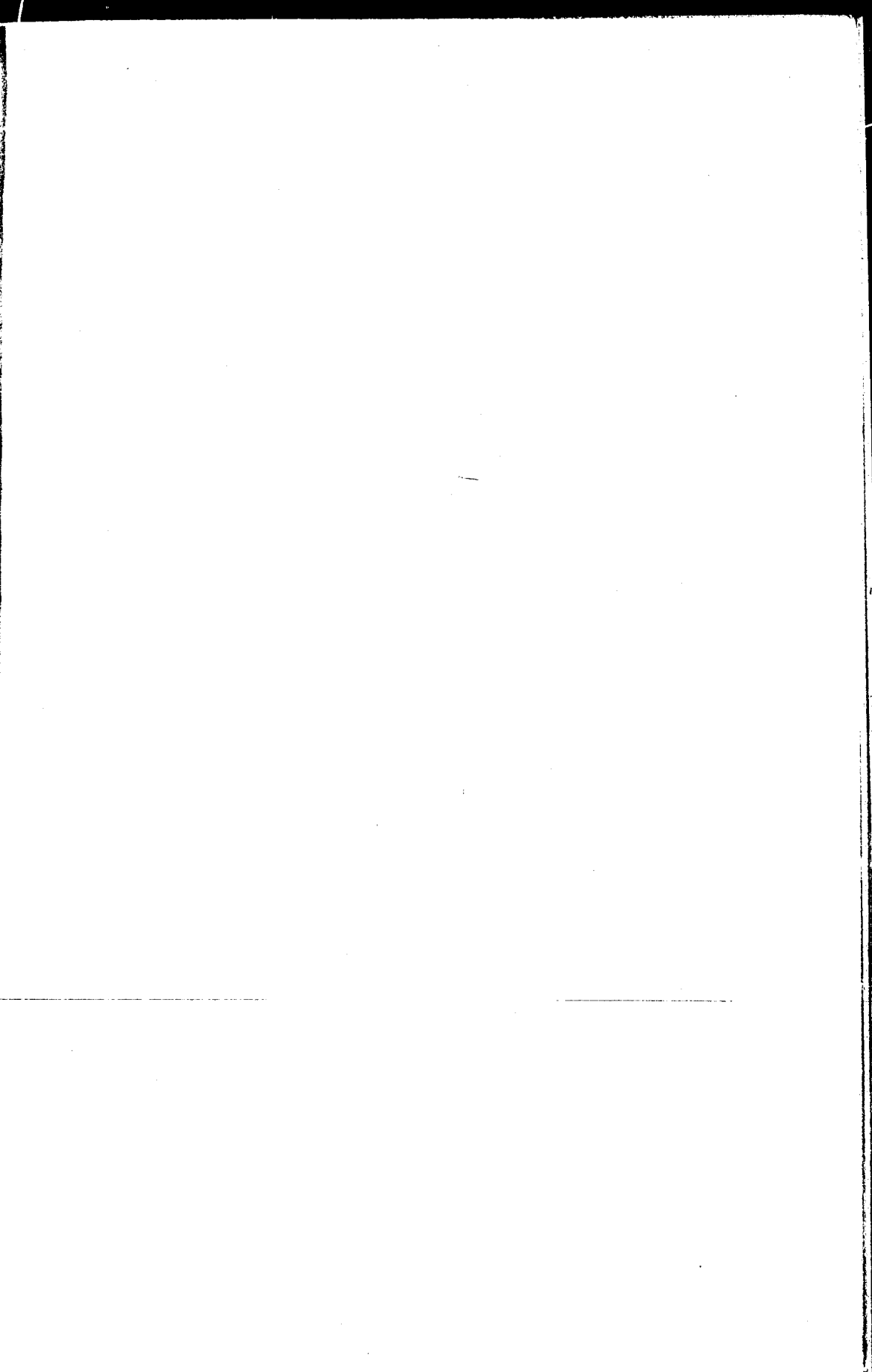
Prominent among the statements in these three letters are these:—

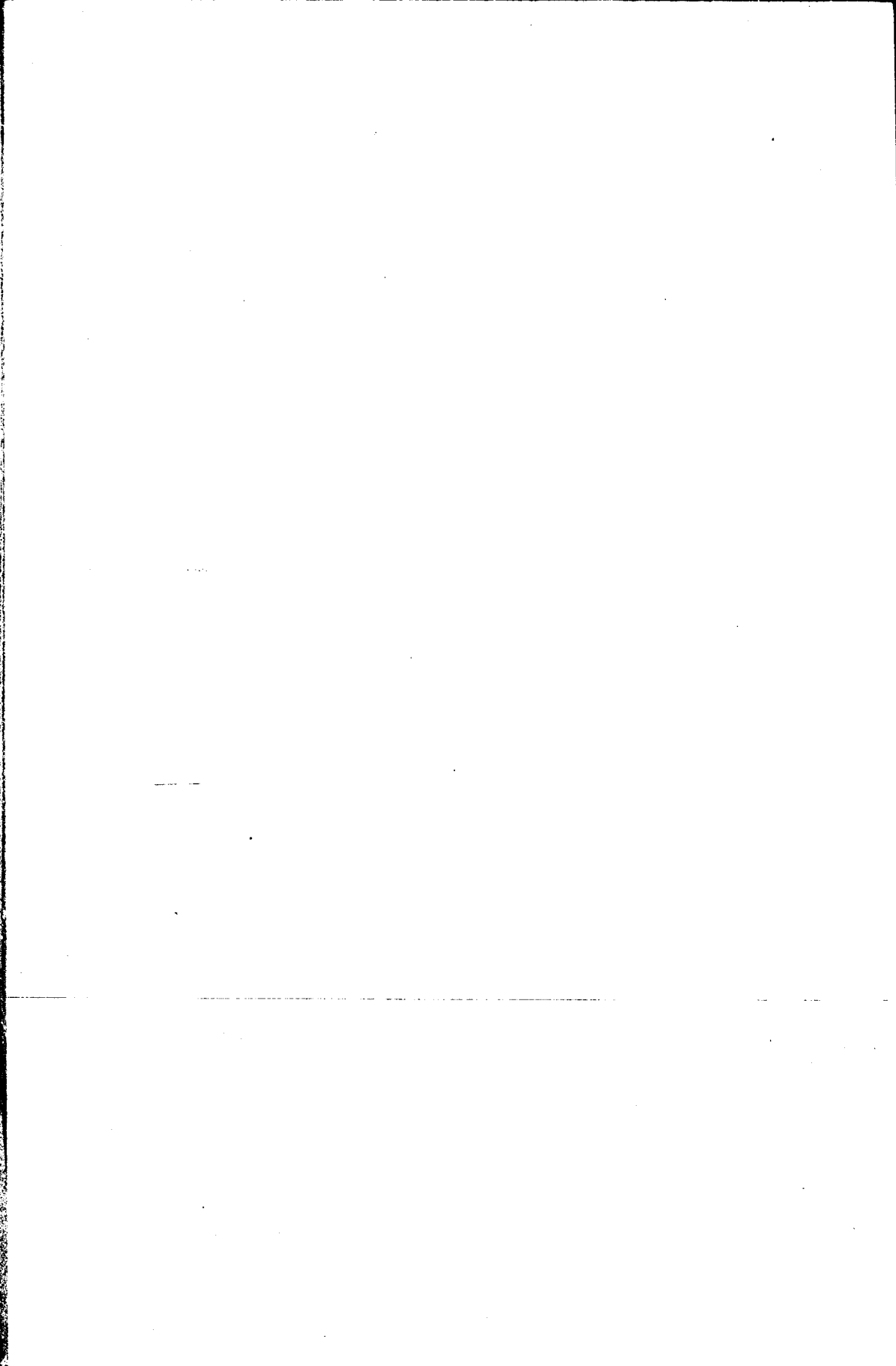
In that of January 26, from Brown to Powell, it is asserted that:—
Garland stated 21 cents was "the utmost reduction he or you could make since at that rate, you got barely 5 per cent on your expenditure." ". only this statement of Mr. Garland secured the payment of your accounts."

The Auditor General requires a refund of \$2,822.40 on the field dressings, which would reduce their cost to 16 cents. Meantime \$2,601.77 representing unpaid invoices will be withheld.

In that of January 27, from the Deputy Minister of Militia to the Auditor General it is asserted that:—

The Director of Contracts had according to his statement relied on the assurance of Garland that only the price of the dressings had included only five per cent to Powell.





In that of January 28, Garland pursues his denial of personal interest; and denies having restricted Powell's benefit to 5 per cent. Incidents now entered a new field of occurrence.

PUBLIC ACCOUNTS.

Sessional Paper No. 122a, 1915, is initialed "Correspondence between Auditor General and Militia Department referring to Expenditure under War Appropriation Act."

Copy of it, as printed by Order of Parliament, was filed in this record as Exhibit No. 1, and has been utilized.

On March 12, 1915, it was moved by Mr. A. K. Maclean (Halifax) that this correspondence be referred to the Committee of Public Accounts with power to investigate and to report, Hansard (1915), p. 945, 946, 947.

The Right Honourable the Premier acquiesced, stating that the Minister of Militia and Defence welcomed the inquiry. Mr. W. F. Garland intervened in the debate to say that while it was not the practice to make such reference except as to matters which had appeared in the Public Accounts, he desired that every facility should be afforded "those who think they have found any cause of offence in me to prove such offence in the quickest possible way."

The printed evidence taken before the Committee was filed as Exhibit No. 2. It is not now among the papers, no doubt through having been of constant use during the sittings.

Another copy was not securable. I have made my page references to the Vol. I.I. of the Journals of the House (1915), which are of more general access. My abbreviation is "J."

Powell, throughout his evidence before the Committee, persisted that he was the sole party in interest.

After hearing several witnesses the following occurred (J., p. 200):—

"Hon. Mr. REID: Before you proceed with the different cases to come before the Committee this morning I want to make a statement with reference to this case of Mr. Powell. I want to say that I have brought to the attention of the Prime Minister and my colleagues in the Government the circumstances of this case and I have explained to them the evidence which has been given with regard thereto. The Prime Minister is of the opinion, which is shared by his colleagues that the circumstances surrounding the purchase from Mr. Powell are of such a character that the whole matter should be referred with the evidence taken before the Committee to the Department of Justice for the purpose of making such further investigation as may be necessary and of taking such action as may be warranted by the facts. This action should include among other things the recovery of any moneys which have been paid by the Government in excess of fair and reasonable values.

"Shortly after the outbreak of war the Prime Minister brought to the attention of his colleagues the absolute importance of making contracts direct with manufacturers or producers and of thus avoiding the use of outside agents and middlemen so that any unnecessary commission or undue price might be avoided. The Minister of Militia informs me that this has been the policy adopted in his Department.

"The Minister of Militia had no personal knowledge of the contract with Mr. Powell and knew nothing of the circumstances until they were disclosed at a later date.

"The Government is determined to protect fully the interests of the country in this and in all cases and to take such proceedings as may be necessary for that purpose.

"Now, Mr. Chairman, I beg to move the following motion, seconded by Mr. Rhodes, that the following report be made by the Committee respecting this case:—

"The Committee begs to report to the House the evidence adduced in respect to the contract for supplies purchased from Mr. E. Powell and to express its opinion that the contracts for such supplies do not appear to have fully protected the public interests; and the Committee therefore recommend that the evidence adduced and all papers connected with the matter should be referred by the House to the Department of Justice for any further necessary investigation and for the recovery of any moneys overpaid and the taking of such further action as may be warranted by the facts.

"We know that Mr. Brown held back \$2,000, and for that reason there is no blame upon him. I think Col. Jones is more blameable than he.

"Mr. GERMAN: The motion is absolutely unnecessary, because all this evidence will be reported to the House in any event in the usual course.

"Mr. GARLAND: When this matter first came up for investigation I spoke to the Prime Minister and asked him to have a thorough investigation, which he afterwards gave. I have never taken any part in this investigation up to the present. I want it to be as full as possible and it has been as full as it can be. There has been no wrong doing on my part brought out. It has been already shown in the evidence that I recommended Mr. Powell, and I did so because he was a reputable young man, also because I was informed by Mr. Shaver that they could not sell direct to the Government, that he had been informed by Col. Jones that they did not buy direct from United States firms, therefore it was my privilege as a member to recommend some man for this position. I recommended Mr. Powell, considering he would be able to attend to it and he fulfilled the contract, but he did not expect the contract would amount to the total it did when he procured this order. This is shown by his evidence and he is a reputable young man. He has stated to the Committee that he made 28 per cent profit; personally I consider that fair, but others do not. That is a matter of opinion. The recommendation that I made may have been a mistake on my part and I am willing to admit that mistake for the simple reason that the Government has stated that the policy of the Government was to buy direct from the manufacturers. Mr. Shaver did not say that when he called to see Mr. Powell in the first instance; he said in his evidence that the Government did not wish to buy direct from the manufacturers. I think it is right, Mr. Chairman, that Mr. Powell should not retain any of the money. I recommended Mr. Powell and I now recommend that he return the whole amount of the money that he received and I have a letter here addressed to the Chairman, which I would like him to read to the Committee."

Letter handed to the Chairman.

The CHAIRMAN: I will read this letter. (Reads):

"OTTAWA, March 27, 1916.

"Mr. H. B. MORPHY, M.P.

DEAR SIR,—In view of the policy of the Government in buying direct from the manufacturer, I do not consider it honourable to keep this profit to my credit in the bank, but enclose check for same in favour of the Department of Militia and Defence.

Please have invoices, etc., returned to me. Thanking the committee for their kind hearing.

Yours very truly,

E. Powell."

A cheque on the Union Bank of Canada dated March 26, 1915, payable to the Department of Militia and Defence for \$6,300, signed by 'E. Powell' is enclosed with the letter."

"Mr. KYTE: You did not recommend a man named 'Cook'?"

Mr. GARLAND: No. I did not recommend any other person than Mr. Powell, who was the only druggist in my constituency I would recommend.

Mr. BLAIN: We are to understand then that the check in your hands, Mr. Chairman, together with the amount that is held by the Department, represents the total amount of profit that Mr. Powell made by the transaction? That is as I understand it.

"The CHAIRMAN: Oh, I would not be held accountable for saying 'yes' to that.

"Mr. BOYES: I remember asking Mr. Powell the exact amount he had in the bank, and he stated it was \$6,300, and the bills unpaid amounted to \$2,601.77.

"Mr. GARLAND: Mr. Powell does not want to keep one cent."

The motion was carried and the Report, thereafter adopted by the House. Hansard (1915) p. 2805, 2824.

In furtherance of its instructions there occurred this correspondence. Pr. Ev. Vol. 1, p. 7.

"May 17, 1915.

"DEAR SIR,—The Minister of Justice has been informed, whether reliably or not I cannot say, that your investigation of the accounts connected with war supplies has disclosed cases of apparent frauds by which public moneys have been unduly obtained and which were not investigated by the recent Parliamentary Committee, and he desires me to say that as the whole subject of these occurrences is now referred to this department for consideration and such proceedings as may be found justified, he would be glad if you would call his attention to any such cases of which you may be aware, or to any evidence which you think ought to be considered.

"Yours truly,

"Deputy Minister of Justice.

JOHN FRASER, Esq., I.S.O.,
Auditor General, Ottawa."

"AUDITOR GENERAL'S OFFICE, CANADA.

"OTTAWA, May 19, 1915.

Pr. Ev. Vol. 1, p 8.

"DEAR SIR,—I have to acknowledge receipt of your letter of the 17th instant in reference to the accounts connected with war supplies, expressing the desire of the Minister of Justice that I would call his attention to any cases of apparent frauds by which public moneys have been unduly obtained and which were not investigated by the recent Parliamentary Committee.

"In reply, I beg to say that if such cases should be discovered I will call his attention to the same.

"I enclose herewith a copy of a letter which I sent the Department of Militia and Defence in reference to the purchase of hospital cases from Mr.

REPORT OF COMMISSIONER

Brownlee, where the profits are excessive; practically 100 per cent. I have not received a reply to my letter or any explanation in reference to it, and think that some action should be taken.

"Yours truly,

"J. FRASER,
Auditor General.

"The Deputy Minister of Justice,
OTTAWA, Ont."

This Commission thereafter took up the matter.

GARLAND THE PRINCIPAL.

Interwoven with the letter and cheque of restitution handed to the Chairman of the Committee were financial dealings between Powell and Garland of dramatic character.

Throughout his examination before the Committee, and, for a time before this Commission, Powell, with obdurate persistence, held to the assertion that he was the real vendor and the only beneficiary of the resulting profits.

His answers, in respect to details, abounded with: "I do not remember;" "I cannot recollect;" "I cannot say."

He shared in the common and mistaken belief that these indefinite answers, although knowingly false, would, in morals, salve his conscience, and, in law, protect him from criminal prosecution.

Of his prevarications there was no doubt; of his falsehoods belief only fell short of certainty. I intervened to say that the manner of his evidence was exceedingly painful and finally: "I want to give you this warning, that if you propose to trifle with this Commission you will find yourself doubly mistaken."—Pr. Ev. Vol. 1, p. 79.

There followed admissions of Garland being the principal, of his having been the receiver of large sums drawn from the bank account; and of his having repaid them to supply the funds for the cheque sent to the Chairman of the Public Accounts Committee.

Garland, on being called to the box, acknowledged that he was the real profiteer, and the director of the operations, financial and otherwise.

FINANCIAL OPERATIONS.

The incidents which immediately preceded the letter and cheque of restitution may, without exaggeration be classed as remarkable.

Garland had taken to his own use, the profits as they accrued, indeed in two instances in advance of their accrument.

He admits having received the following sums withdrawn from the current bank account, (Exhibit 20):—

November 2, 1914	.....	\$3,000 00
" 10, "	.....	300 00
" 18, "	.....	420 00
" 18, "	.....	52 31
" 19, "	.....	1,200 00
" 19, "	.....	1,800 00
" 22, "	.....	2,000 00

\$8,772 31

In his evidence (Pr. Ev. Vol. 1, p. 125), he puts his receipts at \$8,790 00
 (Between these two sums there is a trifling discrepancy of \$17.69).

Which he accounts for in this way:—

November 27, 1914, paid back to cover bank debit balance	\$ 690 00	
January 30, 1915, paid back to cover bank debit balance	1,800 00	
March 27, 1915, returned to Powell, to be placed in a separate bank account from which to pay the cheque of \$6,300 handed to the Chairman of the Public Accounts Committee	6,300 00	\$8,790 00

Examination of the current bank account shows:—

As to the re-deposit of \$890:—

The payment to Garland of \$2,000 had created a debit balance on November 27, of \$676.03. This Garland covered.

As to the re-deposit of \$1,800:—

The unexpected refusal of the Director of Contracts to pay accounts rendered for \$2,601.77, as appears by his letter of January 26, 1915, and the taking up of Bauer & Black drafts had created a debit balance on January 16, of \$1,777.02, plus \$8.10 interest on over drafts; total \$1,785.12. This Garland covered.

As to the cheque for \$6,300 handed to the chairman of the Public Accounts Committee, a peculiar series of incidents needs relation.

In the course of his remarks, set forth on a preceding page, Garland asserts that the cheque with its covering letter had resulted from his advice to Powell to abandon profits in their entirety. The fact was that the moneys came, by indirection, from Powell himself in this devious way.

He instructed Powell to open a new account, in the Savings Department of the Union Bank; to deposit therein the three following sums, which he then and there handed back; and to forward to the chairman the resulting balance, with the letter, which also appears on a preceding page:—

March 9, 1915—Deposit, cash	\$3,400
March 10, 1915— “ “	2,000
March 11, 1915— “ “	900
	<hr/>
	\$6,300
March 25, 1915—Cheque to the order of the Department of Militia and Defence transmitted to H. B. Morphy, chairman of the Public Accounts Committee	6,300

This account, if inspected, would create the belief that Powell had put to his own personal and special credit, and paid therefrom, so much at least of accrued profits.

It is a noticeable fact that in the current account, Exhibit 20, the names of the payees appear, save as regards withdrawals attributed to Garland, with the exception of one sum of \$50 which Powell took for himself. These are noted with the letter "O", seemingly because the cheques were made payable to bearer.

Exhibit 20:

These "C" withdrawals (less the exception) amount to	\$9,166 56
Pr. Ev. Vol. 1, p. 125:	
As we have seen Garland admits.	8,790 00
	\$ 376 56

Pr. Ev. Vol. 1, pp. 83, 101:

Powell substantiates the larger figure.

This balance, and possibly somewhat more, Garland still has to account for.

As regards the total profits sought to be made, there still remains those included in the invoices for \$2,601.77, payment of which has been refused.

With the \$6,300 returned and the \$2,601.77 still in hand for goods delivered and not paid, there is full assurance that the public will not pay more than Bauer & Black prices for the goods.

Powell did not keep account books or even memoranda. He received back his cheques and destroyed them. There has been, as a result, need of much groping for facts and much analysis of figures. As to the latter they suffice for practical purposes, although I cannot hope to claim for them a book-keeper's precision.

CONCLUSIONS—NO CORRUPT PRACTICES BY OFFICIALS.

It is cause for satisfaction that they do not include, in even remote degree, any corrupt practice on the part of public officials. Certainly Bauer & Black paid nothing to obtain their sales; it is equally certain that Powell and Garland did not. All the Government payments went, without break, into the current bank account; and all withdrawals are accounted for. Pr. Ev. Vol. 1, p 79.

THE DIRECTOR OF CONTRACTS.

Our plunge into war cast upon the Director of Contracts vast and unusual responsibilities. From all branches of our military service requisitions for supplies poured in upon him.

A contingent of over thirty thousand men, was equipped, sailed for England within two months. By thousands, indeed it is not an exaggeration to say by tens of thousands, other Canadians were hastening to the colours.

In the first six weeks of the war the Contracts Branch handled the equivalent of two years ordinary business; over 6,000 letters were despatched; hundreds of requisitions were dealt with; a staff not possible of expansion by the addition of even partially trained men, worked beyond the limits of nervous, physical, and effective strength; all tended to the sometimes obliteration of ordinary safe-guards and precautions, and lack of proper attention to business methods existent under normal conditions.

All this, with much more of like kind, is to be found in the attested report of the Director of Contracts. Pr. Ev. Vol. 3, p 2161, 2184.

The avalanche of work which, for a period of months, almost submerged the closely inter-related branches of the Militia Department finds further expression in the Reports of:—

- The Deputy Minister of Militia and Defence. Pr. Ev. Vol. 3, p 2172.
- The Chief of the General Staff. Pr. Ev. Vol. 3, p 2172.
- The Quartermaster General. Pr. Ev. Vol. 3, p 2176.
- The Paymaster General. Pr. Ev. Vol. 3, p 2179.
- The Director of Contracts. Pr. Ev. Vol. 3, p 2181.

It would be an injustice, to which I cannot commit myself, were the abnormal conditions of the time not recognized in discussing the conduct of these officers and their subordinates.

Between, however, shortcomings resultant of unexampled emergencies on the one hand and dishonest practices on the other, a dividing line must be sharply and incessantly planted.

Fair-minded men will, in the one case, be ready to excuse, even to the point of generosity; on the other opprobrium and, if possible, punishment should follow.

I have already said that of corrupt conduct on the part of officials there was, happily, none.

Like commendation cannot be given of the manner in which the purchases from Powell were handled.

The prices at which Powell bought were reasonable; those at which he sold were loaded with profits which had no justification.

The Director of Contracts is wholly without recollection of having seen the pencil figures which Donaldson took from the original invoices. The keen interest of Garland in the transaction, disarmed, while it might, more reasonably, have excited his suspicions.

He frankly admits that there ought to have been effective scrutiny of cost prices, spite of Powell being in his belief only a local representative, and of his not having "the slightest idea" (Vol. 1, p. 39) that these great profits were being added. Of his not having made this security he says: "I am sorry I did not, but I did not." (J, p. 182). Abnormal conditions are, as well, his excuse as his defence.

His record is that of a zealous, honourable public official. He was called as a witness in connection with a number of other matters which came before me for investigation. I came to have a strong respect for the rectitude of his conduct, and for the earnestness with which he performed the duties of a difficult and responsible position.

E. A. POWELL.

When Garland and Shaver suddenly appointed Powell to be local representative of, or, buyer of goods from Bauer & Black—whichever it was has little importance at the moment—he held a clerkship, at a weekly salary of \$18.00, with the Carleton Drug Company, whereof Garland was president, manager and, apparently, sole master.

Throughout the subsequent transactions with the Contracts Branch of the Militia Department he was the principal in name only; as to prices charged, letters written, openings of bank accounts, manipulations of funds, and restitution of moneys he, simply, did the biddings of his employer.

Before the Public Accounts Committee he persisted to the end that his own was the only interest involved. Before this Commission, he, for a time, withstood the severe pressure of Mr. Thompson's examination. At length his obstinacy gave way. Admissions, although somewhat grudgingly made, revealed the long suspected fact that Garland had been, from the beginning, the real principal.

The evidence given by him, Pr. Ev. Vol. 1, p 126 on March 22, before the Public Accounts Committee (J.V. 51, 1915, p 126) was called to his attention. Therein he had sworn that no one save himself had interest in the contract; that the \$3,000 deposited in the bank belonged to him; that he had not to account for it to anybody; that Garland was not to be benefitted; and more of like tenor.

Questioned by Mr. Thompson as to how he had ventured to make such assertions his attempted and ingenious explanations were: Pr. Ev. Vol. 1, p 127.

"I understood the way this question was if there was any agreement that I had to give this money up and I intended to say that nobody else could take any money."

"I understood it to be that they were interested in such a way that I had to pay that money to them."

"I understood the question if there was an agreement I had to pay them the money—I did not have to give them a cent of the money. The money was all mine."

"Sir CHARLES DAVIDSON: Was it a present you made to Mr. Garland?"

"The WITNESS: He just asked me for the money and I gave it to him."

The ingenuity of these answers—subterfuges though they were—lies in the facts that of specific agreement there was apparently none, and that Garland could not have attempted to recover back by a suit-at-law without running amuck against the Independence of Parliament Act.

It was of obvious importance to discover the malign influence, if any, which had tempted Powell to this course of conduct.

He was questioned on the point:—Pr. Ev. Vol. 1, p. 127.

"Q. (By Mr. Thompson:) . . . were you induced by anybody to make these statements before the Public Accounts Committee?"

"A. No.

"Q. That is quite definite is it?"

"A. Quite definite.

"Sir CHARLES: . . . The question at issue is if you took an oath of that kind voluntarily and without inducement or suggestions from anybody else.

"The WITNESS: There was no suggestion.

"Sir CHARLES DAVIDSON: No previous conversation with any person?"

"The WITNESS: No, not regarding that.—Pr. Ev. Vol. 1, p. 128.

As well before the Public Accounts Committee, as before this Commission—in the latter case at least up to the moment of his recantation—Powell made assertions, under oath, which to his knowledge were false and with the intention, in either case, of misleading the authority holding the proceedings. Here are the consistent elements of perjury. Criminal Code, section 170.

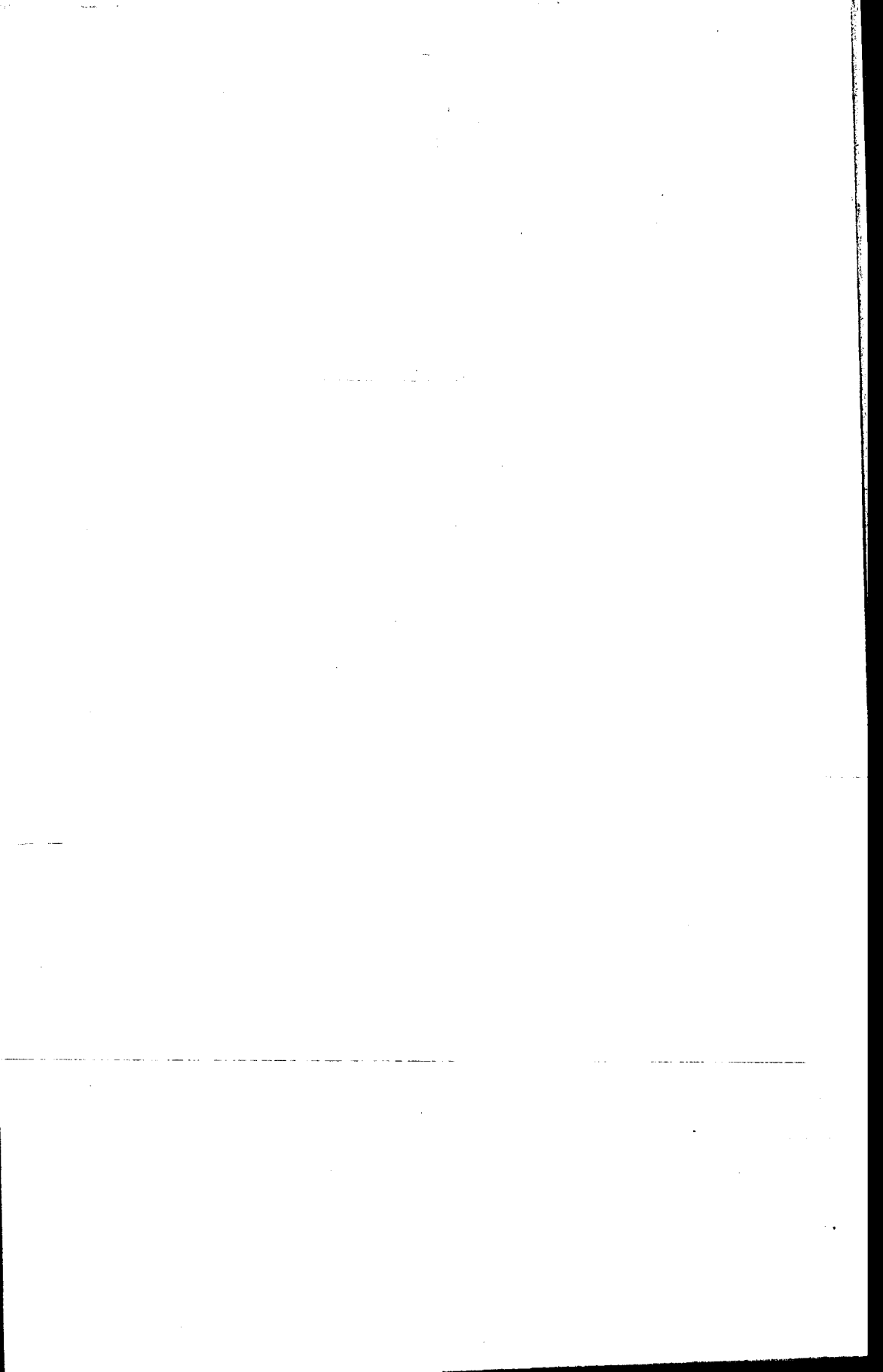
The statement in his letter to the Director of Contracts of September 1st that "The wholesale people are holding me up as you know now with prices, as they say they are too rushed," was knowingly untrue, and was made with the fraudulent intention of inducing payment of his account on the basis of 23 cents for each dressing. Thus nakedly put, the representation amounted to a criminal false pretence (Criminal Code, section 404.) Successful prosecution therefor is clouded as to probable result, by the doubt that the receiver of the letter ever read it. A charge for attempt to commit the offence (Section 72) is not of appealing efficacy.

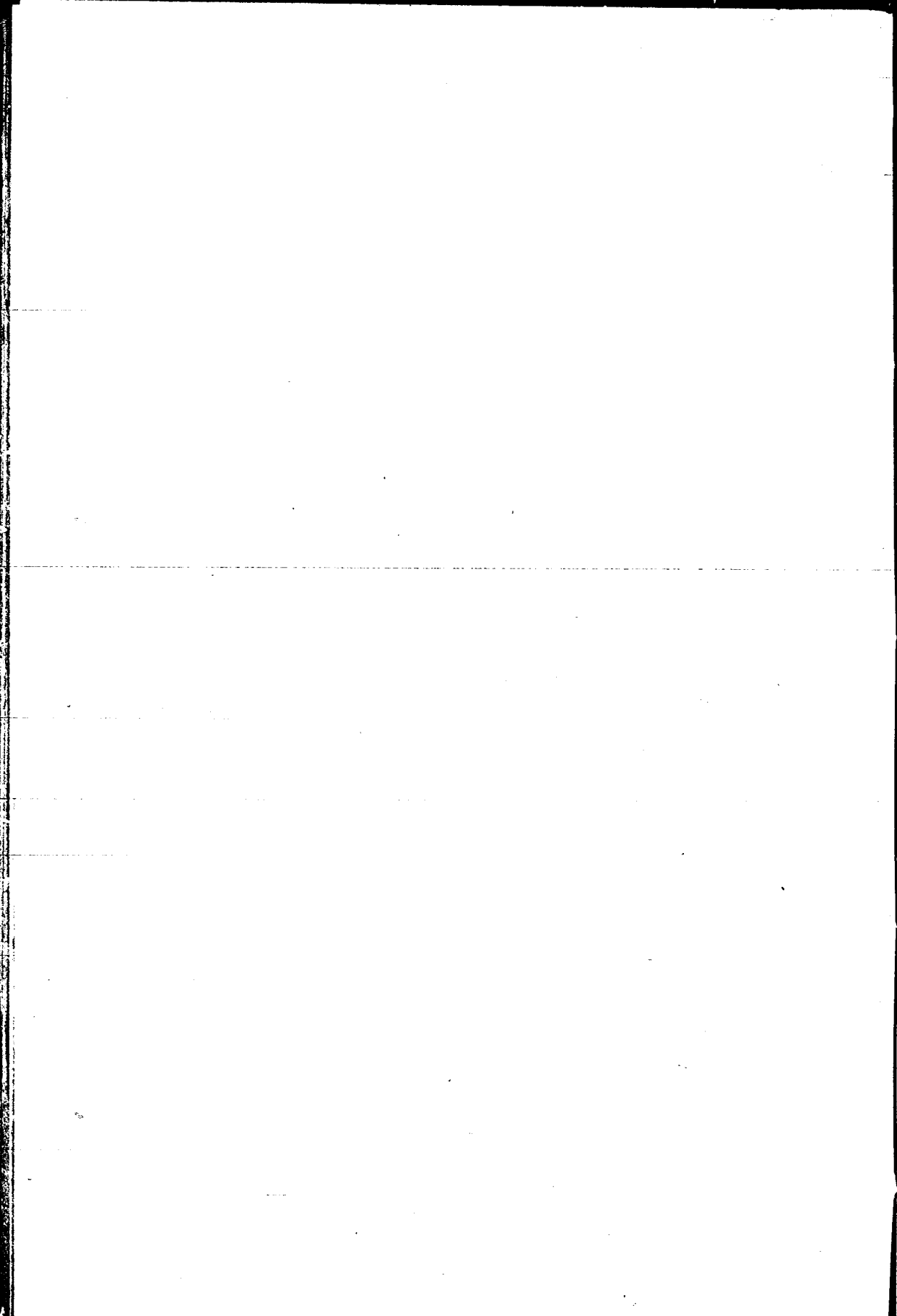
Powell, when in the box, gave me the impression of being a young man on the threshold of life and, so far as appearance went, of respectable qualities. He was serving his time to qualify as a chemist or pharmacist and had intention to complete his course at the College of Pharmacy, Toronto.

Apart from the sum of \$50 checked by him out of the current account he did not stand, in fact or in expectation, to make any personal profit out of these transactions. I could not rid myself of the belief that we had before us a case of almost pathetic devotion and subjection on the part of an employee to his master.

W. F. GARLAND.

From the, in this respect, uncontradicted evidence of Shaver, it is certain that Mr. Garland was, from the outset, determined to secure the business:—





"He said he was going to go for it and the chances were he might get it or some of it—was going after it—he wanted to get it bad. Mr. Garland suggested his (Powell's) name."—Pr. Ev. Vol. 1, p. 54, 55, 57.

And, as to this purpose was the further purpose of personal concealment;—

Shaver. Pr. Ev. Vol. 1, p. 55:—"Mr. Garland said that the goods could not come to the Carleton Drug Company, they could not come to him, he did not want them to come that way. . . . he had to find some person who could handle the account. Garland suggested his (Powell's) name. . . . he (Garland) was connected with the company and it would have to be an outside man."—Pr. Ev. Vol. 1, p. 57, 68.

Garland sought by subterfuge to do what the law, as he well knew, forbade his doing at all.

"The Senate and House of Commons Act," R.S.C., Chapter 10, commonly styled "The Independence of Parliament Act," is expressive of the public interest and of the honour of the House, to which he had been elected by the people of the County of Carleton. Its provisions enact loss of seat and heavy penalties for a Member to enrich himself at the expense of the State or to personally traffic in any public contract.

The fact that Shaver was prepared and desired to get his order direct from the Government did not deter him, any more than did a contingent violation of the Statute, from intervening for the sake of personal profit.

While Powell was swearing before the Committee, that his own was the only beneficial interest, Garland did more than give silent acquiescence. He accompanied the handing of Powell's letter and cheque to the Chairman with assertions which sought to create the belief that there had been no wrong-doing on his own part.

It is fair to add that as regards this Commission he was not aware, because of exclusion from the room, that Powell began his testimony with like denials.

To the Auditor General, to the Director of Contracts, to the House of Commons, Garland maintained a position of defiant innocence. He was conscious as well of the peril as of the impropriety of his conduct.

Instinctively our attention is directed to the question of whether there was a tangible—that is tangible in the sense of punishable,—conspiracy between the employer and his clerk. Conspiracy is, as a rule a difficult crime to establish to the satisfaction of a jury. Especially is this the case if only two persons are concerned, and both have been silent with respect to their mutual relations. Practically we have only the presumptions available which result from circumstantial, and collateral, occurrences.

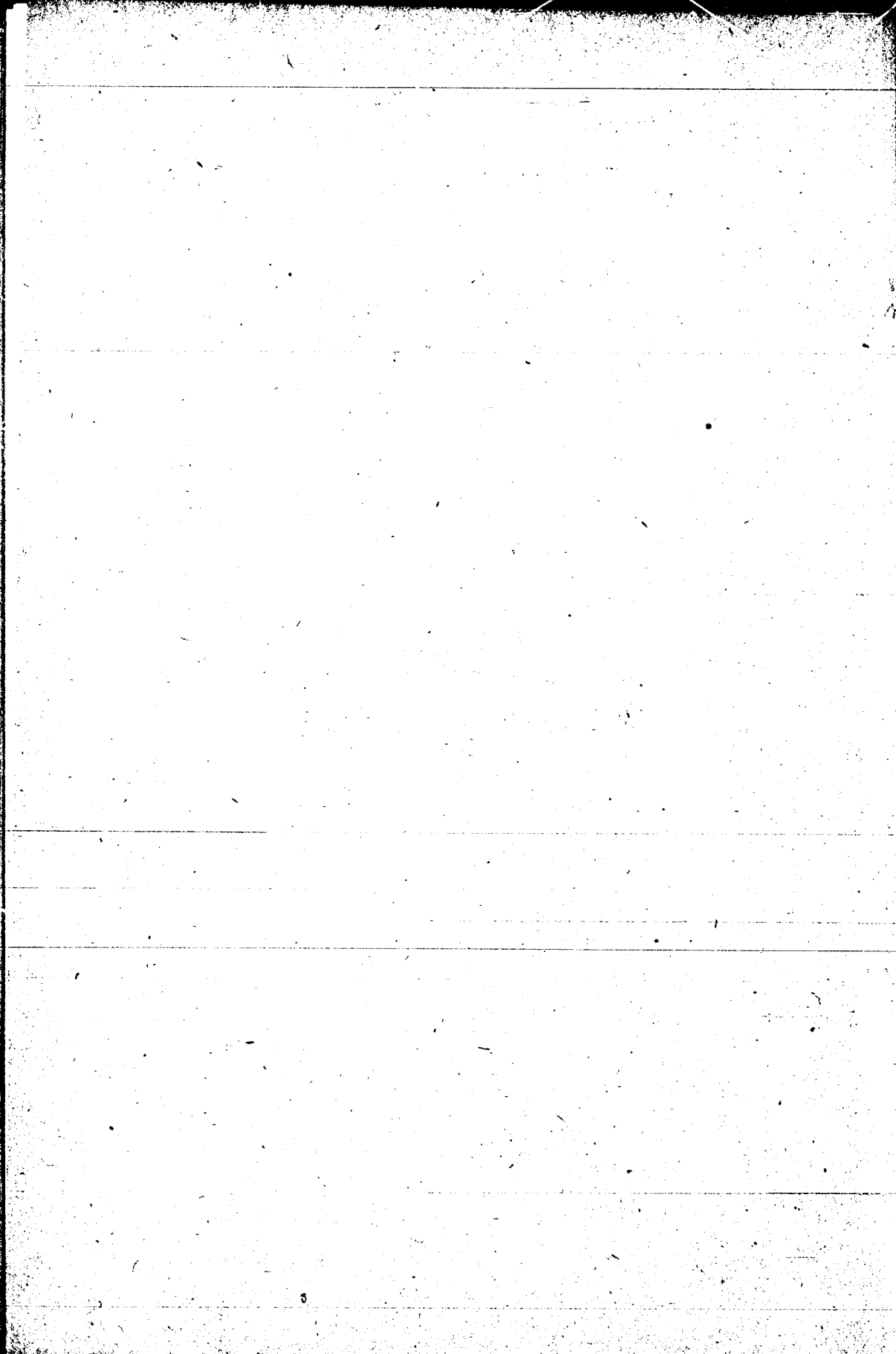
At the conclusion of the proceedings before this Commission Garland resigned his seat.

In supreme degree, having regard to the stress of Canada and to the honour of the House of which he was a Member, he ought to have stood free of the taint of trafficking as a profiteer in public contracts.

I regret to have to conclude that, in these respects, Mr. Garland fell grievously short of, and flagrantly violated the requirements of duty, conscience and patriotism.

I beg to annex a Table of Contents and List of the Exhibits, and to transmit herewith the Exhibits.

C. P. DAVIDSON, Esq.,
Commissioner.



LIST OF EXHIBITS.

Exhibit No. 3.—Filed June 24, 1915, at page 22 of Printed Evidence, Volume 1, being the original invoices of Bauer & Black, filed in the Public Accounts Committee, to E. Powell, produced in the evidence of the Auditor General at that page.

Exhibit No. 4.—Filed June 24, 1915, at page 24 of Printed Evidence, Volume 1, being invoices rendered by E. Powell to the Militia Department, produced in the evidence of J. Lorne Rochester at that page.

Exhibit No. 5.—Filed June 24, 1915, at page 32 of Printed Evidence, Volume 1, being original requisition by the Militia Department to E. Powell for 30,000 field dressings, dated 12th of August, 1914, produced in evidence of Harry W. Brown at that page.

Exhibit No. 6.—Filed June 24, 1915, at page 32 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for miscellaneous medical supplies, dated 12th of August, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 7.—Filed June 24, 1915, at page 32 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for 7,200 first field dressings, dated 18th of August, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 8.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for articles as per appended list, dated 24th of August, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 9.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for bandages and carbolized tow, dated September 10, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 10.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition from the Militia Department to E. Powell for miscellaneous supplies, dated September 11, 1914, produced in evidence of Harry W. Brown at that page.

Exhibit No. 11.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for carbolized tow, dated September 14, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 12.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for surgeons' needles and bottles, dated September 24, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 13.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for labels, dated October 21, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 14.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for bandages, dated October 24, 1914, in evidence of Harry W. Brown at that page.

Exhibit No. 15.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for sundry medical supplies, dated November 11, 1914, in the evidence of Harry W. Brown at that page.

Exhibit No. 16.—Filed June 24, 1915, at page 33 of Printed Evidence, Volume 1, being requisition by the Militia Department to E. Powell for sundry medical supplies, dated October 18, 1914, in the evidence of Harry W. Brown at that page.

Exhibit No. 17.—Filed June 24, 1915, at page 37 of Printed Evidence, Volume 1, being bundle of invoices rendered by Powell to the Militia Department, in evidence of J. B. Donaldson at that page.

Exhibit No. 18.—Filed June 24, 1915, at page 75 of Printed Evidence, Volume 1, being bank book of E. Powell in the Union Bank of Canada at Ottawa, in the evidence of E. Powell at that page.

Exhibit No. 19.—Filed June 25, 1915, at page 80 of Printed Evidence, Volume 1, being copy of Powell's savings bank account, in the evidence of Aubrey Rowan-Legg.

Exhibit No. 20.—Filed June 25, 1915, at page 81 of Printed Evidence, Volume 1, being a copy of current account of E. Powell, agent for Bauer & Black, in evidence of Aubrey Rowan-Legg.

Exhibit No. 21.—Filed June 25, 1915, at page 81 of Printed Evidence, Volume 1, being bundle of deposit slips of E. Powell, in Union Bank, in the evidence of Aubrey Rowan-Legg.

Exhibit No. 22.—Filed June 28, 1915, at page 98 of Printed Evidence, Volume 1, being ledger statement of E. Powell's personal account in the savings department of the Somerset-street Branch of the Union Bank, in the evidence of Aubrey Rowan-Legg.

Exhibit No. 23.—Filed June 28, 1915, at page 100 of Printed Evidence, Volume 1, being statement as to Powell's profits on drugs, in the evidence of J. Lorne Rochester.